

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENNETH FORTUNE,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 04 - 377
)	
CARL HAMBER, Unit Manager;)	Judge Terrence F. McVerry
MARTIN L. DRAGOVICH,)	Magistrate Judge Lisa Pupo
Superintendent; THOMAS L.)	Lenihan
JAMES, Chief Grievance)	
Coordinator; C.O. BASEMORE,)	
Guard; CAROL BAKER, Hearing)	
Examiner; C.O. LITCHARD, Guard;)	
C.O. WIRT, Sergeant; C.O. CRAIG,)	
Guard; C.O. HARMON, Sergeant;)	
ROBERT STEVENS, Unit Manager;)	
KAREN PATTERSON, Accountant;)	
JEAN W. SCOTT, Business)	
Manager; DONALD L. KECHNER,)	
)	
Defendants.)	

ORDER

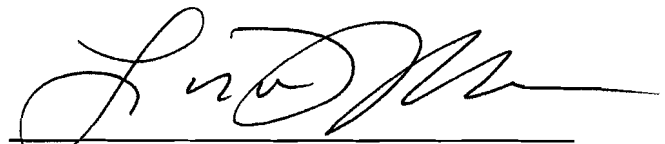
Plaintiff initiated the above captioned action with a Motion to Proceed In Forma Pauperis (Doc. No. 1) which was granted by an Order (Doc. No. 10) on May 4, 2004. Plaintiff filed the Authorization Form (Doc. No. 12) on May 24, 2004, but failed to pay his initial filing fee. Plaintiff then filed a Motion for the Court to Issue an Order that Plaintiff's Complaint be Served (Doc. No. 13) on August 30, 2004.

On March 21, 2005 the Court issued an Order directing Plaintiff to show cause why the case should not be dismissed for failure to prosecute. Plaintiff responded on April 4, 2005 with a payment of the initial filing fee, followed by a Motion for Mandamus purportedly filed pursuant to Federal Rule of Civil

Procedure 81(b), filed on February 21, 2006. (Doc. No. 16).

Pursuant to Federal Rule of Civil Procedure 81(b) the writ of mandamus has been abolished. Relief previously available pursuant to this rule is now obtainable via title 28 United States Code § 1361 as an action to compel an officer of the United States to perform his duty. This motion asked that the Court serve Plaintiff's complaint, which was done, via federal marshal on February 23, 2006. Therefore, it appears that Plaintiff's present motion is moot.

IT IS ORDERED this 28th day of March, 2006, that Plaintiff's Motion for Mandamus is **DENIED** .



LISA PUPO LENIHAN
U.S. Magistrate Judge

cc: KENNETH FORTUNE
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SCI Greene
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Waynesburg, PA 15370